

REMARKS/ARGUMENTS

Responsive to the Official Action dated December 21, 2005, requiring the election of a single group from Groups I-V as delineated on page 2 of the Office Action of December 21, 2005.

Applicants elect with traverse Group I wherein substituent X is formula 4 as shown in claim 1. Claims 1-4, 6-12 and 14, drawn to compounds, composition, and method of use read thereon.

Restriction is only proper if the claims, of the restricted groups are either independent or patentably distinct. The burden of proof is on the Office to provide reasons and/or examples to support any conclusion with regard to patentable distinctness M.P.E.P. 803.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness. Rather, the Office has merely stated conclusions. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement.

In chemical cases, a specified group of materials which do not necessarily belong to an otherwise class can be claimed together employing "Markush" language. The accepted expression for Markush grouping is "selected from the group consisting of." The Markush practice sanctions the claiming together operable substances which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics. The members of the Markush grouping need only possess at least one property in common which is mainly responsible for their function in the claimed relationship. In the instant application, the common characteristic that exists in the compounds claimed in "bis(aryl-2-pyridyl)". All of the compounds exhibit pharmaceutical properties. The same utility in a generic sense suffices.

Further, M.P.E.P. 803 states as follows:

“If a search, and examination of an entire application can be made without a serious burden, the Examiner must examine on its merits even if it included claims to distinct and independent inventions”.

Applicants submit that a search of all claims would not constitute a serious burden on the Office.

Applicants make no statement regarding the patentable distinctness of the species, but note that for the restriction to be proper there must be patentable differences between the species are claimed M.P.E.P. 808.01(a).

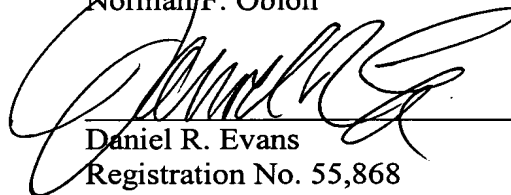
The Office has failed to provide any reasons or examples to support a conclusion that the groups are patentably distinct. Applicants election of formula (4), of claims 1 is for examination purpose only.

Finally, Applicants respectfully submit that, should the elected invention be found allowable, the Office should expand its search to the non-elected groups.

Applicants respectfully, submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Daniel R. Evans
Registration No. 55,868

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)